

**Unofficial Draft Copy**

As of: March 10, 2008 (4:01pm)

LC0038--new

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act revising language related to economic credentialing of physicians and conflicts of interest among health care providers; requiring disclosure of investment interests and employment relationships; requiring notification of alternative care providers; regulating certain contracts among health care providers; providing enforcement; removing a termination date for economic credentialing; amending sections 50-5-105, 50-5-117, and 50-5-207, MCA; repealing Section 6, Chapter 351, Laws of 2007; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION.    **Section 1. Disclosure required.** (1) A health care practitioner, including medical practitioners and members of a profession licensed or certified under Title 37, chapters 7 through 9, 11 through 14, 17, 20 through 28, and 34 through 36, shall disclose to a patient any investment interest in or employment relationship with a health care facility, excluding investment in the practitioner's own office,

(2) A health care practitioner shall provide a patient with written information as provided under subsection (3);

(3) A health care practitioner who, through an investment

interest or employment interest, makes referrals to a health care facility in which that health care provider has an investment interest or employment interest shall:

(a) provide written notification of under 100 words disclosing the investment or employment interest to the patient when making a referral;

(b) provide a list of alternative, effective, and licensed facilities or health care providers if they are available;

(c) inform the patient, either orally or through written means, that the patient has freedom to choose the health care provider or facility to obtain services; and

(d) assure the patient that the referring health care practitioner will not treat the patient differently depending on the patient's choice of health care practitioner or facility.

**NEW SECTION. Section 2. Contracts -- referrals -- primary responsibility -- definition.** (1) (a) A health care practitioner, as described in [section 1], may enter lawful contractual relationships, including the acquisition of ownership interests in health facilities, products, or equipment.

(b) A contractual relationship may not require referrals or an expected volume of referrals between parties to the contract and may not specify that referrals are a basis for remaining an investor or an employee.

(2) (a) A health care practitioner's primary responsibility is the welfare and well-being of the patient in all situations except those in which the primary responsibility is to public

health.

(b) A health care provider may not engage in intentional conduct that is detrimental to a patient's health.

(3) For the purposes of this section, the following definition applies:

(a) A "referral" is a written or oral order from a health care practitioner to a patient or client for health care services, including:

(i) the forwarding of a patient to another health care practitioner or to a health care facility licensed under Title 50 or operated by a practitioner under Title 37 or to an entity that provides or supplies health services or health care supplies; and

(ii) the request or establishment of a plan of care that includes the provision of health services or health care supplies.

(b) A health care referral must include the information in [section 1(3)].

NEW SECTION.    **Section 3. Primary responsibility -- arbitration.** (1) The primary concern of any licensee under Title 50 must be the welfare of the patient except when public health takes precedence over the well-being of an individual.

(2) If a health care provider or a health care facility contends a conflict of interest exists contrary to the intent of subsection (1), the parties in the dispute shall:

(a) agree to be subject to the decision of an arbitrator either appointed as provided in 27-5-211 or jointly agreed to by

the parties in the dispute;

(b) disclose information required by the arbitrator to determine the facts of the case; and

(c) share equally the cost of arbitration.

(3) The arbitrator may use failure to provide information as a factor in deciding a conflict of interest.

**Section 4.** Section 50-5-105, MCA, is amended to read:

**"50-5-105. ~~(Temporary)~~ Discrimination prohibited.** (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

~~(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6 (Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)~~

~~50-5-105. (Effective July 1, 2009) Discrimination~~

~~prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.~~

~~(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.~~

~~(b) For the purposes of this subsection (2), the following definitions apply:~~

~~(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.~~

~~—— (ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.~~

~~—— (3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.~~

~~—— (4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.~~

~~—— (5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."~~

*{ Internal References to 50-5-105: None. }*

**Section 5.** Section 50-5-117, MCA, is amended to read:

**"50-5-117. ~~(Temporary)~~ Economic credentialing of physicians prohibited -- definitions.** (1) A hospital may not engage in economic credentialing by:

(a) except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations, requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital or to any facility related to the hospital;

(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation, on-call requirements, or other scheduling because the physician or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan to a physician or a partner, associate, or employee of the physician because the physician or partner, associate, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(2) Notwithstanding the prohibitions in subsection (1), a hospital may:

(a) refuse to appoint allow full participation on the governing body by a physician if a conflict of interest exists;

(b) deny access to nonpublic information considered by the hospital's governing body if to the governing body of the hospital or to the position of president of the medical staff or presiding officer of a medical staff committee if the is held by a physician or a partner or employee of the physician who

provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(c) deny privileges after due process of law and arbitration to a physician who exhibits an abusive referral pattern.

(3) For the purposes of [section 3] and this section, the following definitions apply:

(a) "Abusive referral pattern" means a referral pattern that:

(i) demonstrates consistent referrals based on a patient's health insurance coverage or ability to pay; and

(ii) has been acknowledged by a health care provider; determined to exist by an arbitrator appointed as provided in 27-5-211 or jointly chosen by the hospital and the physician accused of an abusive referral pattern; or determined to exist by a court of competent jurisdiction.

(b) "Conflict of interest" means a set of conditions in which a health care provider:

(i) exercises professional judgment concerning a patient's welfare that is unduly influenced directly or indirectly by a financial or investment interest;

(ii) demonstrates an abusive referral pattern;

(iii) accepts, pays, or promises to pay a part of a fee in exchange for patient referrals;

(iv) obtains any fee by fraud, deceit, or misrepresentation;  
or



(v) pays or receives, indirectly or directly, any fee, wage, commission, rebate, or other compensation for services not actually or personally rendered.

(c) (i) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital on criteria other than the individual's education, training, current competence, experience, ability, personal character, and judgment.

(ii) ~~This~~ Except as provided in subsection (4), this term does not mean use by the hospital of:

~~(i)(A)~~ exclusive contracts with physicians;

~~(ii)~~ ~~medical staff on-call requirements;~~

(B) disciplinary actions in which a physician or a physician group engages in abusive referral patterns;

~~(iii)(C)~~ adherence to a formulary approved by the medical staff; or

~~(iv)(D)~~ other ~~medical staff policy~~ policies adopted with concurrence of a majority of the medical staff to manage health care costs or improve quality.

~~(b)(d)~~ "Health care facility" has the meaning provided in 50-5-101 ~~and includes diagnostic facilities.~~

(e) (i) "Health care provider" means an individual licensed, certified, or otherwise authorized under Title 37 to provide health care in the ordinary course of business or practice of a profession.

(ii) The term does not include an individual licensed under Title 37, chapter 18.

~~(c)~~(f) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer, multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

~~(d)~~(g) "Physician" has the meaning provided in 37-3-102.

(3) An exclusive contract between a health care facility and a health care provider licensed under Title 37 may not be used to punitively exclude another health care provider because the excluded health care provider has established a competing health care service or facility.

(4) For the purposes of this section, the provisions of 50-5-207 do not apply. ~~(Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)"~~

*{ Internal References to 50-5-117: None. }*

**Section 6.** Section 50-5-207, MCA, is amended to read:

**"50-5-207. ~~(Temporary)~~ Denial, suspension, or revocation of health care facility license -- provisional license.** (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3, except 50-5-117, is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need

requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court.

~~(Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)~~

~~50-5-207. (Effective July 1, 2009) Denial, suspension, or revocation of health care facility license -- provisional~~

~~license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:~~

~~(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.~~

~~(b) The staff is insufficient in number or unqualified by lack of training or experience.~~

~~(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.~~

~~(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.~~

~~(e) There is cruelty or indifference affecting the welfare of the patients or residents.~~

~~(f) There is misappropriation of the property or funds of a patient or resident.~~

~~(g) There is conversion of the property of a patient or~~

~~resident without the patient's or resident's consent.~~

~~—— (h) Any provision of parts 1 through 3 is violated.~~

~~—— (2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.~~

~~—— (3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.~~

~~—— (4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court."~~

*{ Internal References to 50-5-207: None. }*

**NEW SECTION. Section 7. Enforcement -- rulemaking**

**authority.** (1) A conflict of interest complaint under [section 3] may be reported to the attorney general for investigation as an unlawful practice under 30-14-103.

(2) The department of justice may work with the department of public health and human services in its investigation of a complaint under [section 3] and may invoke the provisions of 30-14-111 for cases under [section 3].

(3) The department of justice shall adopt rules to enforce [section 3] and may require financial reports from both parties involved in the complaint.

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NEW SECTION.    **Section 8. Repealer.** Section 6, Chapter 351, Laws of 2007, is repealed.

NEW SECTION.    **Section 9. {standard} Codification instruction.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1 and 2].

(2) [Sections 3 and 7] are intended to be codified as an integral part of Title 50, chapter 4, part 1, and the provisions of Title 50, chapter 4, part 1, apply to [sections 3 and 7].

NEW SECTION.    **Section 10. {standard} Effective date.** [This act] is effective on passage and approval.

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{Name :        Pat Murdo  
Title :        Legislative Research Analyst  
Agency:       Legislative Services Division  
Phone :        444-3594  
E-Mail:        pmurdo@mt.gov}